Criminal Revision No. 162 of 2001
(Old No. 1941/2000)
Hon'ble Irshad Hussain, J.

Heard Sri Rajendra Singh, counsel for the revisionist and A.G.A.

This revision has been preferred against the order dated 19.8.2000 by which the learned Magistrate ordered to commit the case to the court of session after taking cognizance of an offence u/s 307 I.P.C. besides other offences under which the chargesheet was submitted and the learned Magistrate had framed charges against the accused on 2.9.98 and had proceeded with the trial. Before statement of any of the witness could be recorded an application u/s 209 Cr.P.C. was moved by the complainant on 10.12.98 with the contention that in fact, the offence made out against the accused fall u/s 307 I.P.C., therefore, instead of proceding with the trial by the Magistrate the case should have been committed to the court of session. The learned Magistrate passed the above order on this application which, firstly, was without jurisdiction and illegal because once the charges have been framed against the accused, the case could not have been committed to the sessions without recording the evidence of the witnesses and forming an opinion that from the evidence on record offence triable by the sessions court is made out against the accused. Since the order has been passed without jurisdiction and against the provisions of law the same cannot legally be maintained and has to be set aside.

The revision is allowed and the impugned order dated 19.8.2000 passed by the Judicial Magistrate, Roorkee, district Haridwar in criminal case no.679/2000 is set aside. The Learned Magistrate shall record the evidence of the prosecution and if on the basis of the evidence be finds that an offence triable by court of session is made out agains the accused or any of them the only he shall take a decision to commit the case to the court of session. Let the record be sent back to the Magistrate concerned.

(Irshad Hussain, J.)

1.7.2002
M.P.S.